

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

A.G., a minor child; D.A., a minor child; )  
A.L., a minor child; M.K., a minor child; )  
and M.H., a minor child; )  
   )  
**PLAINTIFFS,**                                     )  
   )   **CASE NO: 2:05-CV-1090-MEF**  
VS.   )  
   )  
**AUTAUGA COUNTY BOARD OF**                     )  
**EDUCATION, et al.,**                             )  
   )  
**DEFENDANTS.**                                     )  

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**B.H., a minor child, by and through his**                     )  
**mother and next of friend, D.S.,**                 )  
   )  
**PLAINTIFFS,**                                     )  
   )  
VS.   )   **CASE NO: 2:06-cv-0393-MEF**  
   )  
**AUTAUGA COUNTY BOARD OF**                     )  
**EDUCATION, et al.,**                             )  
   )  
**DEFENDANTS.**                                     )

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL THE  
DEPOSITIONS OF DEFENDANT LARRY BUTLER, ANGEL GARRETT AND DENE  
CLEVELAND**

COME NOW defendants Autauga County Board of Education and Joseph L. Butler and respectfully oppose plaintiffs' Motion to Compel the depositions of Defendant Larry Butler, Angel Garrett and Dene Cleveland:

1.     These two cases were only consolidated as of last Friday, June 23, 2006.
2.     The parties have until April 12, 2007 to complete discovery.
3.     Judge Fuller granted plaintiffs' motion for leave to amend their complaint to add

Dene Cleveland as a defendant last Friday, June 23, 2006, in the *A.G.* case.

4. Plaintiffs filed their First Amended Complaint in *A.G.* on June 27, 2006, and a corrected version yesterday.

5. Judge Fuller granted plaintiffs' motion for leave to amend their complaint in the *B.H.* case to add Dene Cleveland as a defendant on June 8, 2006.

6. On June 16, 2006, the *B.H.* plaintiffs filed their First Amended Complaint adding Ms. Cleveland.

7. Defendant Dene Cleveland has yet to be properly served with the Summons and First Amended Complaint in either case.

8. The parties have not even begun written discovery in the *B.H.* case.

9. The parties have over 10 months in which to complete discovery in both cases.

10. Clearly, Ms. Cleveland deserves the opportunity to be served and initiate written discovery against these plaintiffs before her deposition is taken.

11. Further, all defendants should be given the chance to have the plaintiffs in the *B.H.* case respond to their written discovery before Mr. Butler, Ms. Cleveland or any Autauga County Board of Education employee's deposition is taken.

12. All of the defendants, including any Board employee, should also be allowed to hear what the plaintiffs' specific accusations against them are before they are deposed.

13. The defendants have deposed four of the five sets of plaintiffs in the *A.G.* case, and plan on deposing the last set upon the student's return to Alabama in early August.

14. Upon the completion of written discovery in the *B.H.* case, the defendants plan to notice the deposition of that set of plaintiffs as soon as practicable.

15. As the attachments to plaintiffs' Motion to Compel show, the defendants have repeatedly requested the first depositions of the plaintiffs for over a year.

16. Plaintiffs never objected to these requests.

17. In fact, when plaintiffs' counsel requested that co-defendant Terry Wright's deposition be taken before his criminal sentencing, the undersigned again voiced these defendants' position that all plaintiffs' depositions should be taken before any defendant's deposition. (See Ex. B to plaintiffs' motion)

18. Thereafter, an agreement was reached between the parties that some of the plaintiffs' depositions would take place in the days before Mr. Wright's deposition, and the remainder would occur the next week.

19. It was not until the second week of depositions of the plaintiffs that the undersigned was informed that one set of plaintiffs would not be available until August.

20. The Middle District's Guidelines to Civil Discovery Practice, Section II. A., state "A courteous lawyer is normally expected to accommodate the schedules of opposing lawyers. In doing so he can either prearrange a deposition or notice the deposition while at the same time indicating a willingness to be reasonable about any necessary rescheduling."

21. Plaintiffs failed to abide by these guidelines when noticing the depositions which they are now attempting to compel.

22. On a different occasion, and once again failing to abide by Section II. A. of the Guidelines, plaintiffs' counsel noticed the deposition for a non-party witness to occur today.

23. Plaintiffs have not provided any reason why Defendants Butler or Cleveland or any Board employee's deposition must occur in the next six weeks before the remaining two sets of

plaintiffs' depositions.

24. Obviously, the plaintiffs will have ample time during which to take the depositions of Joseph L. Butler, Dene Cleveland, after she has been served and an answer filed on her behalf, and any Autauga County Board of Education employee after the plaintiffs' depositions have been taken.

25. Defendants will cooperate with plaintiffs' counsel in scheduling the defendants and any Board employee's depositions before the end of discovery.

26. Plaintiffs have failed to show good cause why these individuals should be compelled to sit for their depositions before the conclusion of written discovery and the plaintiffs' depositions.

27. Plaintiffs have not attempted to resolve this issue with defendants' counsel except by unilaterally noticing the depositions and filing this Motion to Compel.

28. Clearly, the Motion to Compel is due to be denied so that the defendants can take the remaining two plaintiff students and their parents' depositions and continue with written discovery.

WHEREFORE, PREMISES CONSIDERED, Defendants Autauga County Board of Education and Joseph L. Butler respectfully request that this Court deny plaintiffs' Motion to Compel the depositions of defendants and non-parties and award any appropriate remedies to defendants for having to respond to the motion.

Respectfully submitted,

s/Katherine C. Hortberg

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this **29<sup>th</sup>** day of **June, 2006**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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*s/Katherine C. Hortberg*  
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Of Counsel

